IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C. (Appeal) No.1428 of 2007

Commissioner of Income Tax,
Chennai. .. Appellant

versus

Shri.T.A.Krishnaswamy .. Respondent

PRAYER: Tax Case Appeal preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 12.2.2007 in ITA No.3268/Mds/2004 against the order of the Commissioner of Income Tax (Appeals) dated 5.10.2004 in IT/Appeal No.267/2004-2005 and against the order of the Income Tax Officer, Business Range - VI (3) Chennai 34 dated 31/3/2004 in AAAHT00265J.

For Appellant : Mr.J.Narayanasamy,
Junior Standing Counsel for
Income Tax

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J.)

By formulating the question of law as to whether, in the facts and circumstances of the case, the Tribunal was right in dismissing the appeal following its earlier order on the issue of directions by the Commissioner of Income Tax (Appeals) without going into the merits of the case to see if the re-opening was valid, the present Tax Case Appeal is filed. The relevant assessment year is 1998-99.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The assessee filed the return of income for the assessment year 1998-99 on 26.10.1998, admitting a total income of Rs.1,00,586/-. The assessment was completed under Section 143 (1) on 11.3.2004. The assessment for the assessment years 1994-95 to 1997-98 were reopened under Section 147 and were completed on 11.3.2002. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) against that order. The Commissioner of Income Tax (Appeals) allowed the appeal and gave direction to the Assessing Officer to reopen the assessment for the assessment year 1998-99 to look into the source of investment afresh in the property of 4 plots in VGP Golden Beach as the investments had come out of unexplainable sources. Against that order of the Commissioner of Income Tax (Appeals), the assessee filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, by its order dated 26.7.2004, held that the Commissioner of Income Tax (Appeals) could not give direction to reopen the assessment in respect of another year. In the meanwhile, the Assessing Officer, as per the direction of the Commissioner of Income Tax (Appeals), reopened the assessment and completed the assessment.

3. Aggrieved by the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals), following the order of the Appellate Tribunal in ITA No.23 to 26/Mds/2003 dated 26.7.2004, cancelled the reopened assessment for the assessment year 1998-99 observing that the reopening of assessment under Section 148 was wrong and bad in law. Aggrieved by that order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal upheld the order of the Commissioner of Income Tax (Appeals). Hence, the present appeal is filed by the Revenue, formulating the substantial question of law, as stated above.

4. Learned counsel for the Revenue submitted that as against the order of the Income Tax Appellate Tribunal, in respect of the assessment years 1994-95 and 1997-98 in the assessee's own case, the Revenue filed appeals before this Court and the appeals have been dismissed in T.C.Nos.1380 to 1383 of 2005 by judgment dated 2.1.2006 (COMMISSIONER OF INCOME TAX-VII CHENNAI Vs. SHRI T.A.KRISHNASWAMY (HUF). The said order would squarely cover the issue to the case against the Revenue.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. In the judgment dated 2.1.2006 in T.C.Nos.1380 to 1383 of 2005 (COMMISSIONER OF INCOME TAX-VII CHENNAI Vs. SHRI T.A.KRISHNASWAMY (HUF), to which one of us (K.RAVIRAJA PANDIAN,J.) is a party, held:

> "7. Of-course, the factual aspect stated by the learned Junior Central Government Standing Counsel that the Kartha of HUF filed the declaration under VDIS might be correct. But, the fact finding authority clearly recorded a finding that the properties, which are the subject matter of VDIS declaration, have been registered in the names of four individuals and all of them were assessees by themselves in the assessment year 1997-98. The Kartha of HUF who filed the declaration under VDIS is not the owner of the properties. The contention of the learned Junior Central Government Standing Counsel that the direction for reopening of assessment by the Assessing Officer in the hands of the assessee is correct. In respect of the other contention that the direction given by the Commissioner of Income Tax (Appeals) to reopen the assessment for the assessment year 1998-99 is uncalled for, having regard to the nature of the power given to him under the said provision i.e. Section 246 of the said Act. It is automatic that as and when the Appellate Authority passes an order, the original authority is having every power to give effect to that order in a procedure known to law. However, the Appellate Authority cannot exceed in his power while exercising jurisdiction vested by the statute. In the above said factual situation, we are of the view that there is no infirmity or irregularity in the order of the Tribunal so as to warrant entertainment of the appeals. "

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The reasoning stated above in the cited case would apply to the case on hand on all fours. Following the same, the Tax Case Appeal is dismissed.

Ksv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Asst Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, 3rd Floor Besand Nagar,
Chennai.

2. The Commissioner of Income Tax,
Chennai.

3. The Income Tax Officer,
Business Range - VI (3)
Chennai 34.

4. The Commissioner of Income Tax (Appeals)
Chennai.

• 1 cc to M/s. Pushyasitaraman, Advocate SR No. 70568

KM(CO)
SR/7.12.2007

T.C. (Appeal) No.1428 of 2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/